

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 117 Disclosure of Grand Jury Testimony
SPONSOR(S): Criminal Justice Subcommittee, Gossett-Seidman and others
TIED BILLS: IDEN./SIM. **BILLS:** CS/SB 234

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	16 Y, 0 N, As CS	Leshko	Hall
2) Ethics, Elections & Open Government Subcommittee	17 Y, 0 N	Skinner	Toliver
3) Judiciary Committee			

SUMMARY ANALYSIS

Section 905.24, F.S., requires grand jury proceedings to be kept secret. Section 905.27, F.S., prohibits any person present or appearing during a grand jury proceeding, including a grand juror, state attorney, assistant state attorney, court reporter, stenographer, or interpreter from disclosing the testimony of a witness examined before the grand jury or other evidence received by the grand jury. A court may authorize disclosure of such testimony for the following purposes: ascertaining whether it is consistent with the testimony given by the witness before the court; determining whether the witness is guilty of perjury; or furthering justice.

It is unlawful for any person to knowingly publish, broadcast, disclose, divulge, or communicate to any other person, or knowingly cause or permit to be published, broadcasted, disclosed, divulged, or communicated to any other person, in any manner whatsoever, any testimony of a witness examined before the grand jury, or the content, gist, or import thereof, except when such testimony is or has been disclosed in a criminal or civil proceeding. If the court orders the disclosure of grand jury testimony in a criminal or civil case, the testimony may only be disclosed to specified persons and can only be used in the defense or prosecution of the civil or criminal case and for no other purpose whatsoever. A person who illegally discloses grand jury testimony commits a first-degree misdemeanor and such a violation constitutes criminal contempt of court.

CS/HB 117 amends s. 905.27, F.S., to specify that when a court is considering whether to authorize the disclosure of grand jury testimony for the purpose of furthering justice, it may consider whether such disclosure would further a public interest when the disclosure is requested by the media or an interested person, regardless of whether that purpose is for use in a criminal or civil case, and:

- The subject of the grand jury inquiry is deceased;
- The grand jury inquiry related to criminal or sexual activity between the subject of the grand jury investigation and a person who was a minor at the time of the alleged criminal or sexual activity;
- The testimony was previously disclosed by a court order; and
- The state attorney is provided notice of the request.

The bill specifies that nothing in the new disclosure provisions created by the bill hinders the court's ability to limit the disclosure of grand jury testimony, including, but not limited to, redaction.

Additionally, the bill prohibits the custodian of a grand jury record from disclosing the testimony of a witness examined before the grand jury or other evidence received by the grand jury.

The bill may have an indeterminate negative fiscal impact on clerk's offices as their workload may increase if additional records are ordered to be released, some requiring redactions. However, the records affected by the bill are very limited and, as such, any additional costs will likely be absorbed within existing resources. See Fiscal Comments.

The bill provides an effective date of July 1, 2024.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Section 905.24, F.S., requires grand jury proceedings to be kept secret. A grand jury's primary role is to determine whether sufficient evidence exists to justify indicting an accused individual.¹ To make such determinations, a grand jury also serves as an investigating body with subpoena powers.² In Florida, a grand jury indictment is only required to try a person for a capital offense; i.e., one where the death penalty may be given.³ For all other offenses, the state attorney may choose to proceed by either filing an information⁴ or seeking a grand jury indictment.⁵ While an information is routinely used to charge individuals in Florida, grand juries are often utilized for controversial cases such as those involving alleged wrongdoing by public officials.⁶

Who May be Present During Grand Jury Sessions

Section 905.17, F.S., provides that no person shall be present at grand jury sessions except:

- The witness under examination;
- One attorney representing the witness;
- The state attorney, assistant state attorneys, and other designated assistants;
- The court reporter or stenographer; and
- An interpreter.⁷

An attorney representing a witness under examination is permitted to advise and counsel the witness, but may not address the grand jurors, raise objections, make arguments, or otherwise disrupt proceedings before the grand jury. A witness's attorney is subject to the prohibition against disclosing grand jury testimony or other evidence received by the grand jury under s. 905.27, F.S.⁸

Any stenographic records, notes, and transcriptions made by the court reporter or stenographer are filed with the clerk who must keep them in a sealed container not subject to public inspection. Such records, notes, and transcriptions are confidential and exempt from public record requirements under s. 119.071(1), F.S., and s. 24(a), art. I, Fla. Const., and may only be released upon a request from the grand jury for use by the grand jury or by order of the court pursuant to s. 905.27, F.S.⁹

Prohibitions on Grand Jury Testimony Disclosure and Exceptions

Section 905.27, F.S., prohibits any person present or appearing during a grand jury proceeding, including a grand juror, state attorney, assistant state attorney, court reporter, stenographer, or interpreter from disclosing the testimony of a witness examined before the grand jury or other evidence received by the grand jury. A court may authorize disclosure of such testimony for the following purposes:

- Ascertaining whether it is consistent with the testimony given by the witness before the court;
- Determining whether the witness is guilty of perjury; or

¹ S. 905.16, F.S.

² S. 905.185, F.S.

³ S. 15(a), art. I, Fla. Const.

⁴ An "information" is a formal criminal charge made by a prosecutor without a grand-jury indictment. Black's Law Dictionary (3d pocket ed. 2006).

⁵ S. 15(a), art. I, Fla. Const.; The Florida Bar, *The Grand Jury*, <https://www.floridabar.org/news/resources/rpt-hbk/#1619193085264-69d9d83a-2799> (last visited Jan. 25, 2024).

⁶ *Id.*

⁷ S. 905.17(1), F.S.; s. 12(a)(5), art. V, Fla. Const., also provides that the Judicial Qualifications Commission may also have access to information from grand juries subject to the rules of the commission.

⁸ S. 905.17(2), F.S.

⁹ S. 905.17(1), F.S.

- Furthering justice.¹⁰

It is unlawful for any person to knowingly publish, broadcast, disclose, divulge, or communicate to any other person, or knowingly cause or permit to be published, broadcasted, disclosed, divulged, or communicated to any other person, in any manner whatsoever, any testimony of a witness examined before the grand jury, or the content, gist, or import thereof, except when such testimony is or has been disclosed in a criminal or civil proceeding as authorized.¹¹

When a court orders the disclosure of grand jury testimony for use in a criminal case, it may be disclosed to the:

- Prosecuting attorney of the court in which such criminal case is pending;
- Prosecuting attorney's assistants, legal associates, and employees;
- Defendant;
- Defendant's attorney; and
- Defendant's attorney's legal associates and employees.¹²

When a court orders the disclosure of grand jury testimony for use in a civil case, it may be disclosed to all parties to the case and to their attorneys and their attorneys' legal associates and employees. However, the grand jury testimony released by court order can only be used in the defense or prosecution of the civil or criminal case and for no other purpose whatsoever.¹³

Any person who illegally discloses grand jury testimony commits a first-degree misdemeanor¹⁴ and such a violation constitutes criminal contempt of court.¹⁵

Jeffrey Epstein Grand Jury Testimony

In 2006, Palm Beach County police opened an investigation into Jeffrey Epstein regarding allegations of sexual abuse of minors. Following the investigation, Palm Beach County police asked the state attorney to charge Epstein with four felony charges including unlawful sexual activity with a minor and lewd and lascivious molestation. Although the state attorney had the authority to file such charges by an information, Epstein's case was instead sent to a grand jury.¹⁶ The grand jury ultimately only found sufficient evidence to charge Epstein with one count of misdemeanor soliciting a prostitute.¹⁷

In 2021, the Palm Beach Post sued the state attorney and clerk's office in an attempt to obtain a court-ordered release of the grand jury testimony in Epstein's case, seeking the disclosure for the purpose of furthering justice, however, the presiding judge ruled against the Post and the testimony was not released.¹⁸ The Palm Beach Post subsequently appealed this decision to the Fourth District Court of Appeal (DCA) which ultimately reversed and remanded the case for further proceedings in the trial court. The Fourth DCA ordered that upon remand the trial court conduct an *in camera* inspection¹⁹ of the grand jury testimony and determine whether disclosing such testimony would further justice. The Fourth DCA further held that if the trial court found such disclosure would further justice, that the trial court had the inherent authority to disclose such testimony.²⁰ The trial court has since ordered transcription of the grand jury testimony to assist in facilitating an effective review of the materials.²¹

¹⁰ S. 905.27(1), F.S.

¹¹ S. 905.27(2), F.S.

¹² *Id.*

¹³ *Id.*

¹⁴ A first-degree misdemeanor under this section is punishable as provided in s. 775.083, or by a fine not exceeding \$5,000, or both.

¹⁵ S. 905.27(4)-(5), F.S.

¹⁶ Holly Baltz, *Why was Jeffrey Epstein in 2006 charged only with picking up a prostitute? Where we stand*, Palm Beach Daily News, Feb. 10, 2023, <https://news.yahoo.com/why-jeffrey-epstein-2006-charged-100257919.html?ref=upstract.com> (last visited Jan. 25, 2024).

¹⁷ Soliciting another person to commit prostitution is a first-degree misdemeanor for a first violation. S. 796.07(5)(a), F.S.

¹⁸ Terri Parker, *Palm Beach County Clerk of Courts working to unseal Jeffrey Epstein grand jury transcripts*, ABC 25 WPBF News, <https://www.wpbf.com/article/palm-beach-county-clerk-courts-working-unseal-jeffrey-epstein-grand-jury-transcripts/38699982> (last visited Jan. 13, 2024).

¹⁹ "*In camera* inspection" means a trial judge's private consideration of evidence. Black's Law Dictionary (3d pocket ed. 2006).

²⁰ *CA Florida Holdings, LLC v. Dave Aronberg and Joseph Abruzzo*, 360 So. 3d 1149 (Fla. 4th DCA May 10, 2023).

²¹ Order Directing Transcription of the Testimony in the Grand Jury Proceedings, *CA Florida Holdings, LLC v. Dave Aronberg and Joseph Abruzzo*, 50-2019CA-014681 (15th Cir. June 29, 2023).

Effectuated of Proposed Changes

CS/HB 117 amends s. 905.27, F.S., to specify that when a court is considering whether to authorize the disclosure of grand jury testimony for the purpose of furthering justice, it may consider whether such disclosure would further a public interest when the disclosure is requested by the media or an interested person, regardless of whether that purpose is for use in a criminal or civil case, and:

- The subject of the grand jury inquiry is deceased;
- The grand jury inquiry related to criminal or sexual activity between the subject of the grand jury investigation and a person who was a minor at the time of the alleged criminal or sexual activity;
- The testimony was previously disclosed by a court order; and
- The state attorney is provided notice of the request.

The bill provides that when grand jury testimony is disclosed for use in a criminal case to the prosecuting attorney or defense attorney, and their assistants, legal associates, and employees, such testimony can only be used in the defense or prosecution of a criminal case and for no other purpose.

The bill specifies that nothing in the new disclosure provisions created by the bill hinders the court's ability to limit the disclosure of grand jury testimony, including, but not limited to, redaction.

The bill includes the custodian of a grand jury record among the individuals who are prohibited from disclosing the testimony of a witness examined before the grand jury or other evidence received by the grand jury. The bill also specifies that persons present or appearing during a grand jury proceeding are prohibited from making such disclosures.

The bill provides an effective date of July 1, 2024.

B. SECTION DIRECTORY:

Section 1: Amends s. 905.27, F.S., relating to testimony not to be disclosed; exceptions.

Section 2: Reenacts s. 905.17, F.S., relating to who may be present during session of grand jury.

Section 3: Provides an effective date of July 1, 2024.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill may have an indeterminate negative fiscal impact on clerk's offices as their workload may increase if additional records are ordered to be released, some requiring redactions. However, the records affected by the bill are very limited and, as such, any additional costs will likely be absorbed within existing resources.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On January 19, 2024, the Criminal Justice Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment:

- Clarified that in order to meet the new requirements allowing for disclosure of grand jury testimony, the person who the subject of the grand jury inquiry allegedly had criminal or sexual activity with must have been a minor at the time of the alleged criminal or sexual activity, but does not have to also be a minor at the time of the grand jury inquiry.
- Made technical changes.

This analysis is drafted to the committee substitute as passed by the Criminal Justice Subcommittee.